

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
May 17, 2016

v

DREW STAFFORD THORNGATE,  
Defendant-Appellant.

No. 326104  
Kalamazoo Circuit Court  
LC No. 2013-001771-FC

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Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

PER CURIAM.

The jury convicted defendant of first-degree murder, MCL 750.316(1). The court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to life without parole and ordered him to pay a \$130 crime victim fee, \$68 in state costs, and \$3,563 in restitution. Defendant now appeals, and we affirm.

Defendant argues that a police officer who was not admitted as an expert witness impermissibly gave expert testimony. Because this issue is unpreserved, we review it for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Under this standard, the defendant bears the burden of proving that "1) error . . . occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights," "i.e., that the error affected the outcome of the lower court proceedings." *Id.* at 763.

Here, the police officer's challenged testimony related to blood spatter and his perceptions at the crime scene. We need not decide whether the challenged testimony was improper expert testimony because assuming arguendo that the police officer impermissibly gave expert testimony, defendant has not established how this error affected his substantial rights. At trial, defendant admitted that he intentionally hit the victim in the head twice with a baseball bat but claimed that he was insane or that his actions were not premeditated and did not demonstrate an intent to kill. Because defendant admitted to the underlying act of hitting the victim, the police officer's testimony regarding blood spatter and "castoff" could not have affected the outcome of defendant's trial. Therefore, defendant is not entitled to any relief because he has failed to establish how any potential error affected his substantial rights.

Defendant also argues that the order to pay restitution must be vacated because Michigan's restitution scheme is constitutionally deficient under *Apprendi v New Jersey*, 530 US

466, 490; 120 S Ct 2348; 147 L Ed 2d 435 (2000) and its progeny because a judge—and not a jury—determined the amount of restitution. However, in *People v Corbin*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2015) (Docket No. 319122, issued September 22, 2015); slip op, pp 10-11, this Court recently addressed and rejected this very same argument. The Court noted that, while “a criminal fine imposed as part of a defendant’s sentence must be determined by a jury,” “[a] criminal fine and restitution are not synonymous.” *Id.* at \_\_\_ (slip op at 11). In brief, the Court was “unaware of any state or federal courts that have adopted defendant’s constitutional argument.” *Id.* at \_\_\_ (slip op at 11). Because defendant’s argument has already been squarely rejected by this Court in binding precedent, MCR 7.215(J)(1), he is not entitled to relief.

Affirmed.

/s/ Michael J. Riordan  
/s/ Henry William Saad  
/s/ Jane E. Markey